IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/10/2003

CORAM

THE HON'BLE MR. JUSTICE N.V.BALASUBRAMANIAN
AND
THE HON'BLE MR. JUSTICE K.P.SIVASUBRAMANIAM

WRIT PETITION NO.9624 OF 1998 AND WRIT PETITION NO.9625 OF 1998

K.Sankaran .. Petitioner in both cases

-Vs-

1. The Union of India,
represented by the Secretary,
Ministry of Home Affairs,
New Delhi.

2. The Commandant,
C.I.S.F.,
Chennai Port Trust,
Chennai-1.

3. The Assistant Commandant,/Sec.III,
C.I.S.F.,
Chennai Port Trust,
Chennai-1. .. Respondents in both cases

Petitions filed under Article 226 of the Constitution of India praying
for the issue of a writ of certiorari as stated therein.

For appellant : Mr.T.N.Sugesh

For respondents : Mr.G.Jayachandran,
Addl. Central Govt.
Standing Counsel.

:ORDER

K.P.SIVASUBRAMANIAM,J.

The petitioner who is working as a Constable in the Central
Industrial Security Force, was alleged to have been found sleeping while on
duty during his 'C' shift duty from 21.00 hours on 17.1.1998 to 6.00 hours on
18.1.1998 and again during 18.00 hours on 18.2.1998 to 6.00 hours on
19.2.1998. Hence proceedings w ere initiated against him separately with
reference to the two incidents. Ultimately he was imposed with a punishment

of fine to the extent of seven days' pay separately on each incident/charge, by the third respondent by order dated 6 .3.1998 and confirmed by the second respondent on appeal by order dated 18.6.1998. Hence, the above two writ petitions.

2. As regards the first incident the petitioner was detailed for the first shift at the time as mentioned above. It is alleged that when the Assistant Commandant was on his night checking at 00.15 hours he found the petitioner sleeping while on duty. A charge memo was served on him and by a reply dated 6.2.1998 the petitioner denied the charges. The petitioner claims to have made a representation requesting for certain relevant documents and alleges that without supplying the said documents, the impugned order of punishment dated 6.3.1998 had been issued.

3. Similarly as regards second incident, the petitioner was detailed for 'C' shift on the night of 18.2.1998/19.2.1998 at Sentry post at the residence of the Deputy Chairman of the Port Trust. While the Assistant Commandant was on night checking at about 1.30 hours the petitioner was found sleeping. A charge memo dated 20.2.1998 was served on the petitioner. But the petitioner without submitting any explanation, according to the respondents, merely demanded production of certain documents. After considering all the facts and evidence, the disciplinary authority found the petitioner guilty of the charges and awarded penalty of a fine of seven days' pay by order dated 6.3.1998. In the appeal filed to the Commandant, the petitioner sought for copies of some of the documents and he was permitted to peruse the records by letter dated 11.6.1998. Though the said letter was acknowledged by the petitioner on 15.6.1998, he did not respond and hence by order dated 18.6.1998, the appeal was rejected. Hence the above two writ petitions.

4. Learned counsel for the petitioner raised before us the following points:-

(i) No enquiry was conducted and the petitioner was not permitted to peruse the documents.
(ii) The penalty imposed against the petitioner was disproportionate to the nature of the charges and consequently would affect the promotional opportunities.

5. Learned counsel for the petitioner also took us through the show-cause notice issued against the petitioner, his reply and the order of punishment. Learned counsel aso refers to the various grounds raised in the appeal and contends that the Appellate Authority had not taken into account the various grounds raised by him. It is contended that Rule 35 has been violated as the petitioner had been denied opportunity to defend himself.

6. Learned counsel for the respondents while denying the contentions raised on behalf of the petitioner, refers to Rule 35 of the Central Industrial Security Force, 1969 and contends that no oral enquiry was contemplated for imposition of minor penalties. As regards the quantum of punishment, learned counsel for the respondent contends that the petitioner

has been imposed only with minor penalty which did not call for any interference by this Court.

7. We have considered the submissions of both sides. As regards the grievance that there was no proper enquiry, on a perusal of Rule 35 of the Rules dealing with the procedure for imposing minor penalties, it is seen that order imposing penalties under Section 31(e) to 31 (h) shall not be passed without the member of the force being informed in writing of the proposal to take action and all the allegations on which the action was proposed to be taken and that he shall be given an opportunity to make any representation. The Rule does not contemplate any oral enquiry. The disciplinary authority is required to take into consideration such representation. Under Section 35(2) the record of the proceedings in such case shall include a copy of intimation to the delinquent, a copy of the statement of allegations, representation if any by the member so charged and the orders together with reasons therefor. It is not the case of the petitioner that any of the said requirements have been violated. The grievance of the petitioner is that no enquiry was conducted and that he was not furnished with copies of documents required by him.

8. As regards the enquiry, as already stated, the Rule does not contemplate any oral enquiry for the imposition of minor penalties. As regards copies of documents alleged to have been demanded by the petitioner, in the counter it has been clearly stated that the request of the petitioner was considered and he was directed to peruse the records vide letter of the respondent dated 11.6.1998. It is further stated that the said letter was acknowledged by the petitioner on 16.6.1 998. However for reasons known to the petitioner he did not respond and hence the appeal was disposed of on merits. Therefore, the petitioner cannot be heard to raise the contention that he was not furnished with copies of documents or permitted to peruse the records.

9. It is further seen that the beat book of the petitioner which is the only relevant document is actually issued to him and entry is made in that book during duty period. The fact of the petitioner having been slept during the period, is entered in the beat book itself and the petitioner was also allowed to peruse the corresponding entries available with the respondents. Therefore, we are unable to accept the contention of learned counsel for the petitioner that there was violation of principles of natural justice. As regards quantum of punishment, the petitioner is assigned the duty of Sentry for limited hours only and the least which is expected of him is to be vigilant during the said period. He has failed to do so. It is also pertinent to note that the nature of punishment imposed against the petitioner is also minor and minimal in nature. Therefore, we are unable to accept the contention that the punishment is disproportionate with the delinquency.

10. As regards his promotional opportunities being affected and that a lesser punishment such as censure can be awarded, on a perusal of the rules relating to promotion, we find that as regards the categories mentioned as minor punishments, there is no differentiation as between the said categories for being taken into account at the time of promotion.

Therefore, no purpose would be served in altering the punishment.

11. In the result, we do not find any reason to interfere
with the impugned order. Both the writ petitions are dismissed. No costs.

Index: Yes.
Internet : Yes.

sai/-

To

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